

REMARKS

Claims 1, 2, 6, 13, 14, 19 and 20 have been amended, wherein the amendments to claims 2, 6, 13, 14, 19 and 20 are of a minor editorial nature unrelated to the patentability or scope of the claims. New claims 48-57 have been added. These new claims read on the elected species.

The election requirement is traversed because it would not be a serious burden on the examiner to examine all of the pending claims. According to the MPEP as explained at section 803.01, a Restriction is proper under the statute when two conditions are met: (1) two or more independent claimed inventions are able to support separate patents, and (2) examining the entire application would be a serious burden on the examiner. The MPEP points out that this is *prima facie* shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02. No such showing has been made.

MPEP 808.02 provides :

Where the related inventions as claimed are shown to be distinct under the criteria of MPEP § 806.05(c) -§ 806.05(i), the examiner,

in order to establish reasons for insisting upon restriction, must show by appropriate explanation one of the following:

(A) **Separate classification thereof:** This shows that each distinct subject has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search. Patents need not be cited to show separate classification.

(B) **A separate status in the art when they are classifiable together:** Even though they are classified together, each subject can be shown to have formed a separate subject for inventive effort when an explanation indicates a recognition of separate inventive effort by inventors. Separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search.

(C) **A different field of search:** Where it is necessary to search for one of the distinct subjects in places where no pertinent art to the other subject exists, a different field of search is shown, even though the two are classified together. The indicated different field of search must in fact be pertinent to the type of subject matter covered by the claims. Patents need not be cited to show different fields of search. Where, however, the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search, no reasons exist for dividing among related inventions. [emphasis added].

As noted above, the Examiner acknowledges that there is no separate classification of the species. Thus, justification (A) is not provided. Moreover, the Examiner has provided no explanation in relation to either of possible justifications (B) or (C).

The Examiner has the burden to make at least a *prima facie* showing of such

a serious burden. The Examiner has failed to make such a showing. The restriction accordingly should be withdrawn, and examination of all pending claims respectfully is requested.

Claims 21- 47 have been canceled without prejudice or disclaimer of the subject matter thereof. In fact, the claims are being canceled in view of the newly added claims in order to avoid a need to pay an excess claims fee in the event that the restriction is not withdrawn in response to the traversal thereof, which is presented herein. In the event that the restriction is withdrawn, applicants may add back the canceled claims. It is respectfully requested that the Examiner telephone the undersigned attorney once a determination has been made as to whether to withdraw the restriction, so that the canceled claims may be added before substantive examination begins.

Respectfully submitted,

January 21, 2005
Date

SMR/pjl



Steven M. Rabin (Reg. No. 29,102)
RABIN & BERDO, P.C.
CUSTOMER NO. 23995
(202) 371-8976
(202) 408-0924 fax

RESPONSE TO RESTRICTION
REQUIREMENT AND AMENDMENT

(10/628,381)